

REMARKS

Summary of the Amendment

Upon entry of the above amendment, claims 34-123 will have been canceled, claim 1 will have been amended, and claims 124-135 will have been added. Accordingly, claims 1-34 and 124-135 will be pending with claims 1, 129 and 132 being in independent form. Applicant reserves the right to file one or more divisional applications directed to the subject matter of the canceled claims.

Summary of the Official Action

In the instant Office Action, the Examiner reiterated the Restriction Requirement, withdrew claims 35-123, and made the Restriction Requirement final. The Examiner also rejected claims 1-34 over the art of record. Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Restriction Requirement

The Examiner reiterated the previous restriction requirement, withdrew claims 35-123 from examination, and made the restriction requirement final. Applicant disagrees with the Restriction Requirement for the reasons already made of record, but has nevertheless canceled the withdrawn claims. Furthermore, Applicant submits that new claims 124-135 read on the elected invention.

Request for Listing of Applied Document on PTO-892

The Examiner applied U.S. Patent Application Publication No. 2004/0096721 to OHLSEN et

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al in the instant Office Action. As this document was not listed on the form PTO-892, or otherwise cited by Applicant, Applicant requests that the Examiner list this document on a form PTO-892 with the next Office Action.

Traversal of Rejections Under 35 U.S.C. § 102

Applicant traverses the rejection of claims 1-5, 9-11, 14, 26-29, 33 and 34 under 35 U.S.C. § 102(b) as being anticipated by US Patent Application Publication No. 2001/0045364 to HOCKADAY et al.

The Examiner asserts that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, a disposable fuel cell system comprising a fuel cell comprising at least one variable volume chamber, a cartridge comprising at least one variable volume chamber, and a valve system which at least one of regulates, controls and prevents fluid flow between the cartridge and fuel cell, wherein the fuel cell is non-refillable after use, *wherein the cartridge and fuel cell are separate devices in an uninstalled state, and wherein a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell occurs automatically when the cartridge is connected to the fuel cell* as recited in amended independent claim 1.

Applicant acknowledges that HOCKADAY discloses in Fig. 2 a fuel cell system which arguably utilizes a defined fuel chamber 27 which can arguable be characterized as a cartridge.

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However, it is clear from Fig. 2 that the so-called cartridge 27 is arranged within a housing 22 and is therefore not separate from the fuel cell. As such, HOCKADAY does not disclose, or even suggest, that the cartridge and fuel cell are separate devices in an uninstalled state as recited in amended claim 1.

Furthermore, even assuming Applicant accepts the Examiner's assertion that the openings 25 in the wall 27 constitute a valve system (which Applicant submits is incorrect), HOCKADAY clearly lacks any mechanisms (including the openings 25) which even arguably automatically cause a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of HOCKADAY.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because HOCKADAY fails to disclose at least the above mentioned features as recited in independent claim 1, Applicant submits that this document does not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-

noted claims under 35 U.S.C. § 102(b).

Traversal of Rejections Under 35 U.S.C. § 103(a)

Over Hockaday alone

Applicant respectfully traverses the rejection of claims 7, 8, 12, 13, 15, 21, 22 and 30-32 under 35 U.S.C. §103(a) as unpatentable over HOCKADAY et al. alone.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

Notwithstanding the Office Action assertions as to what this document discloses or suggests, Applicant submits that no proper modification of this document discloses, or even suggests: inter alia, a disposable fuel cell system comprising a fuel cell comprising at least one variable volume chamber, a cartridge comprising at least one variable volume chamber, and a valve system which at least one of regulates, controls and prevents fluid flow between the cartridge and fuel cell, wherein the fuel cell is non-refillable after use, *wherein the cartridge and fuel cell are separate devices in an uninstalled state, and wherein a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell occurs automatically when the cartridge is connected to the fuel cell* as recited in amended independent claim 1.

Again, Applicant acknowledges that HOCKADAY discloses in Fig. 2 a fuel cell system which arguably utilizes a defined fuel chamber 27 which can arguable be characterized as a cartridge. However, it is clear from Fig. 2 that the so-called cartridge 27 is arranged within a housing 22 and is therefore not separate from the fuel cell. As such, HOCKADAY does not disclose, or even suggest,

that the cartridge and fuel cell are separate devices in an uninstalled state as recited in amended claim 1.

Furthermore, even assuming Applicant accepts the Examiner's assertion that the openings 25 in the wall 27 constitute a valve system (which Applicant submits is incorrect), HOCKADAY clearly lacks any mechanisms (including the openings 25) which even arguably automatically cause a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper modification of HOCKADAY.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Over Hockaday with Becerra and Ohlsen

Applicant respectfully traverses the rejection of claims 6 and 25 under 35 U.S.C. §103(a) as unpatentable over HOCKADAY in view of US Patent Application Publication No. 2003/0129464 to BECERRA et al. and US Patent Application Publication No. 2004/0096721 to OHLSEN et al.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

Notwithstanding the Office Action assertions as to what these documents disclose or suggest, Applicant submits that no proper combination of these documents discloses, or even suggest: inter alia, a disposable fuel cell system comprising a fuel cell comprising at least one variable volume chamber, a cartridge comprising at least one variable volume chamber, and a valve system which at least one of regulates, controls and prevents fluid flow between the cartridge and fuel cell, wherein the fuel cell is non-refillable after use, *wherein the cartridge and fuel cell are separate devices in an uninstalled state, and wherein a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell occurs automatically when the cartridge is connected to the fuel cell* as recited in amended independent claim 1.

Again, Applicant acknowledges that HOCKADAY discloses in Fig. 2 a fuel cell system which arguably utilizes a defined fuel chamber 27 which can arguable be characterized as a cartridge. However, it is clear from Fig. 2 that the so-called cartridge 27 is arranged within a housing 22 and is therefore not separate from the fuel cell. As such, HOCKADAY does not disclose, or even suggest, that the cartridge and fuel cell are separate devices in an uninstalled state as recited in amended claim 1. Furthermore, even assuming Applicant accepts the Examiner's assertion that the openings 25 in the wall 27 constitute a valve system (which Applicant submits is incorrect), HOCKADAY clearly lacks any mechanisms (including the openings 25) which even arguably automatically cause a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

BECERRA does not cure the deficiencies of HOCKADAY. While Applicant acknowledges that this document discloses a fuel cell, there is no disclosure in BECERRA with regard to the

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cartridge and fuel cell being separate devices in an uninstalled state in combination with a mechanism which even arguably automatically causes a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

OHLSSEN does not cure the deficiencies of HOCKADAY and BECERRA. While Applicant acknowledges that this document discloses a fuel cell and cartridge, there is no disclosure in OHLSSEN with regard to the cartridge and fuel cell being separate devices in an uninstalled state in combination with a mechanism which even arguably automatically causes a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper combination of HOCKADAY, BECERRA and OHLSSEN.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Over Hockaday with Lawrence

Applicant respectfully traverses the rejection of claims 16-20 under 35 U.S.C. §103(a) as unpatentable over HOCKADAY in view of US Patent Application Publication No. 2002/0197522 to

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

Notwithstanding the Office Action assertions as to what these documents disclose or suggest, Applicant submits that no proper combination of these documents discloses, or even suggest: inter alia, a disposable fuel cell system comprising a fuel cell comprising at least one variable volume chamber, a cartridge comprising at least one variable volume chamber, and a valve system which at least one of regulates, controls and prevents fluid flow between the cartridge and fuel cell, wherein the fuel cell is non-refillable after use, *wherein the cartridge and fuel cell are separate devices in an uninstalled state, and wherein a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell occurs automatically when the cartridge is connected to the fuel cell* as recited in amended independent claim 1.

Again, Applicant acknowledges that HOCKADAY discloses in Fig. 2 a fuel cell system which arguably utilizes a defined fuel chamber 27 which can arguable be characterized as a cartridge. However, it is clear from Fig. 2 that the so-called cartridge 27 is arranged within a housing 22 and is therefore not separate from the fuel cell. As such, HOCKADAY does not disclose, or even suggest, that the cartridge and fuel cell are separate devices in an uninstalled state as recited in amended claim 1. Furthermore, even assuming Applicant accepts the Examiner's assertion that the openings 25 in the wall 27 constitute a valve system (which Applicant submits is incorrect), HOCKADAY clearly lacks any mechanisms (including the openings 25) which even arguably automatically cause a transfer of contents of the at least one variable volume chamber of the cartridge to the least one

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variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

LAWRENCE does not cure the deficiencies of HOCKADAY. While Applicant acknowledges that this document discloses a fuel cell and cartridge, there is no disclosure in LAWRENCE with regard to the cartridge and fuel cell being separate devices in an uninstalled state in combination with a mechanism which even arguably automatically causes a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper combination of HOCKADAY and LAWRENCE.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Over Hockaday with Becerra

Applicant respectfully traverses the rejection of claims 23 and 24 under 35 U.S.C. §103(a) as unpatentable over HOCKADAY in view of BECERRA.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

Notwithstanding the Office Action assertions as to what these documents disclose or suggest, Applicant submits that no proper combination of these documents discloses, or even suggest: inter alia, a disposable fuel cell system comprising a fuel cell comprising at least one variable volume chamber, a cartridge comprising at least one variable volume chamber, and a valve system which at least one of regulates, controls and prevents fluid flow between the cartridge and fuel cell, wherein the fuel cell is non-refillable after use, *wherein the cartridge and fuel cell are separate devices in an uninstalled state, and wherein a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell occurs automatically when the cartridge is connected to the fuel cell* as recited in amended independent claim 1.

Again, Applicant acknowledges that HOCKADAY discloses in Fig. 2 a fuel cell system which arguably utilizes a defined fuel chamber 27 which can arguable be characterized as a cartridge. However, it is clear from Fig. 2 that the so-called cartridge 27 is arranged within a housing 22 and is therefore not separate from the fuel cell. As such, HOCKADAY does not disclose, or even suggest, that the cartridge and fuel cell are separate devices in an uninstalled state as recited in amended claim 1. Furthermore, even assuming Applicant accepts the Examiner's assertion that the openings 25 in the wall 27 constitute a valve system (which Applicant submits is incorrect), HOCKADAY clearly lacks any mechanisms (including the openings 25) which even arguably automatically cause a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

BECERRA does not cure the deficiencies of HOCKADAY. While Applicant acknowledges that this document discloses a fuel cell, there is no disclosure in BECERRA with regard to the

cartridge and fuel cell being separate devices in an uninstalled state in combination with a mechanism which even arguably automatically causes a transfer of contents of the at least one variable volume chamber of the cartridge to the least one variable volume chamber of the fuel cell when the cartridge is connected to the fuel cell as recited in amended independent claim 1.

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper combination of HOCKADAY and BECERRA.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Provisional Obviousness-type Double Patenting Rejection

Claims 1-34 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-34 of copending US Patent Application No. 10/824,443.

Applicant initially notes that, according to U.S. patent practice, if the claims are in condition for allowance except for a provisional double patenting rejection over another pending application, the Examiner is to allow the claims of the instant application and possibly present the double patenting rejection in the copending application (MPEP 804). Thus, the Examiner should consider allowing the claims of the instant application and possibly presenting the double patenting rejection in the copending application consistent with MPEP 804.

Applicant also disagrees that the above-noted claims of the instant application are not

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patentably distinct from the noted claims of the noted copending application at least because claims 1-34 of the copending application have been withdrawn from examination by the Examiner in that application.

Accordingly, Applicant respectfully submits that the rejection of the above-noted claims is improper and should be withdrawn.

New Claims are also Allowable

Applicant submits that the new claims 124-135 are allowable over the applied art of record. Specifically, claims 124-128 depend from claim 1 which is believed to be allowable. Furthermore, claims 129-135 recite a combination of features which are clearly not disclosed or suggested by the applied art of record. Accordingly, Applicant respectfully requests consideration of these claims and further requests that the above-noted claims be indicated as being allowable.

CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicant's invention, as recited in each of the pending claims. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

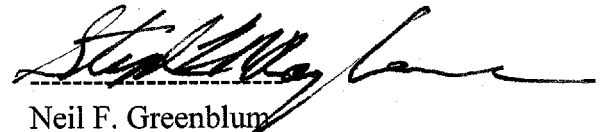
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Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

The Commissioner is hereby authorized to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

Should the Examiner have any questions or comments, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
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